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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

November 22, 1993

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554


Re: Market Entry and Regulation of International
Common Carriers with Foreign Carrier Affiliation
-- AT&T Petition for Rulemaking: RM-8355

Dear Mr. Caton:

Enclosed herewith is the original and four copies of the Request for Authorization to File Statement in Response and Statement of Telefonica Larga Distancia de Puerto Rico, Inc. in Response to Reply Comments of AT&T.

Also enclosed is an additional copy of the Request and Statement and this transmittal which we ask you to date stamp and return.

Respectfully submitted,



James L. McHugh, Jr.

JLM/mc
enclosures

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NOV 22 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Market Entry and Regulation
of International Common Carriers
With Foreign Carrier Affiliations

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RM-8355

REQUEST FOR AUTHORIZATION TO FILE
STATEMENT IN RESPONSE

AND

STATEMENT OF
TELEFONICA LARGA DISTANCIA DE PUERTO RICO, INC.
IN RESPONSE TO REPLY COMMENTS OF AT&T

Telefonica Larga Distancia de Puerto Rico, Inc. ("TLD")
hereby requests, pursuant to Section 1.405(c) of the Commission's
Rules, for authorization to file this Statement in Response to
the Reply Comments of AT&T.

AT&T's Reply Comments contain several statements
directed at TLD and its parent, Telefonica de Espana, which are
incorrect or misleading. It is in the public interest for the
record to contain TLD's brief response to these statements.
Therefor, TLD respectfully requests permission to file the
following Statement in Response to the Reply Comments of AT&T.^{1/}

^{1/} While it is not a subject of major concern, AT&T failed to
serve a copy of those Comments upon TLD's counsel of record in
this proceeding, in violation of Sections 1.405(b) and 1.47(d) of
the Rules. TLD counsel was included in the service list of
AT&T's original Petition, but was deleted from the service list
of AT&T's Reply Comments. We request that AT&T correct this in
the future so that TLD counsel may receive copies of pleadings in
a prompt, timely manner.

This Statement in Response will address several of AT&T's Reply Comment statements.

1. AT&T attempts to imply that the Commenting foreign affiliated carriers stand alone in their opposition to AT&T's Rule Making Petition. AT&T Reply Comments, 2. Considerable exaggeration is required for AT&T to find support for its proposed rules in the Comments of MCI. Beyond that, however, the significant fact is that, other than the Comments of Sprint, there is no real support for the rules which AT&T proposes. AT&T paints its rules as being essential to safeguard customers and the future of competitive international telecommunications. It describes foreign affiliated carrier issues in crisis terms, threatening the future of fair competition in the international telecommunications market. Based on the Comments and Reply Comments filed herein, however, it is not possible to conclude that AT&T's alarm is widely shared or recognized as valid.

The Reply Comments filed by the International Telecommunications Users are particularly significant. These four major U.S. users of international telecommunications services (Citibank, EDS, GE Information Services and IBM), echo the view that AT&T has failed to demonstrate the regulatory necessity of its proposed rules, or that these rules will accomplish the goal of opening the markets of other nations. In fact, these companies ~~express~~ fear that adoption of the AT&T rules would impede the ability of U.S. companies to operate on an international basis, and would likely prompt retaliation by other countries which would damage the development of competition, to

the detriment of U.S. users, but to the possible benefit of AT&T.

2. AT&T states that:

"Telefonica de Espana's investment in a small carrier in Puerto Rico in 1992, and the effect that transaction is likely to have on U.S. customers given Telefonica's closed market in Spain, is dwarfed by the current plans of Telefonica and others to expand their operations in the U.S. and the potential effect on U.S. competition that could follow BT's acquisition of a 20% interest in, and a special relationship with, the second largest U.S. carrier."

AT&T Reply Comments, 7. AT&T's point is certainly not clear. First, it offers no hint as to what it intends by its reference to Telefonica's "current plans" to expand in the U.S. Possibly AT&T is referring to the fact that TLD has pending before the Commission various Section 214 applications. The sum total of all of these applications, all but two of which were pending at the time the Commission approved Telefonica's acquisition of TLD, would hardly constitute an expansion dwarfing TLD's current operations.^{2/} Perhaps AT&T is attempting to suggest that these

^{2/} Telefonica's acquisition of TLD was approved by the Commission on December 18, 1992 in Telefonica Larga Distancia de Puerto Rico, et al., 8 FCC Rcd. 106 (1992) ("TLD Order"). The Section 214 applications which TLD has pending are for six circuits to provide service with the Bahamas, filed August 18, 1992 (I-T-C-92-242); six satellite circuits to provide service with the Netherlands, filed November 12, 1992 (I-T-C-93-033); for authority to own and operate facilities in the Columbus II and Americas-1 cable systems, filed November 10, 1992, (TLD would acquire three joint MIUs [30 circuits per MIU] each with Canada, Spain and Venezuela; two joint MIUs each with Mexico and Hawaii; one joint MIU each with Germany, Italy, Brazil and Trinidad; one whole MIU to Portugal; and 63 whole MIUs for U.S domestic traffic (I-T-C-93-029/030 and SCL-93-001/002); authority to provide private line service (not interconnected to the public switched network) with the Dominican Republic using existing authorized facilities, filed January 28, 1993 (I-T-C-93-091); and for
(continued...)

efforts of TLD to obtain the authorizations and facilities needed to provide effective competition and to survive economically somehow equates to the magnitude of the MCI-BT transaction and presents similar issues. That is just not the case.

Second, AT&T's footnote to the above quoted sentence says that Telefonica obtained "not only a marketing advantage, but a cost and pricing advantage vis-a-vis its competitors on the U.S.-Spain route...." AT&T Reply Comments, 7, note 5. In fact, TLD services only a very small portion of the "U.S.-Spain route." TLD provides service only between Puerto Rico/U.S. Virgin Islands and Spain, and is not authorized to originate traffic elsewhere in the U.S. Again, AT&T does not describe the "marketing advantage" to which it refers. If AT&T is suggesting that TLD has some sort of "ethnic" advantage because of Spanish ownership, that certainly fails to recognize the considerable sophistication of Puerto Rico's international telecommunications consumers. Indeed, it is AT&T, TLD's major competitor, which has the marketing advantage. AT&T's financial and other resources extend far beyond TLD's. AT&T has extensive history and connections with the many businesses which operate both on the mainland and in Puerto Rico/Virgin Islands. It also has entrenched, long term relationships with corresponding carriers throughout the world.

The cost and pricing advantage is alleged by AT&T to exist because Telefonica "continues to charge above-cost

^{2/} (...continued)
authority to resell the services of World Communications, Inc. and TRT/FTF Communications, Inc. to provide international switched services, filed November 2, 1993 (I-T-C-94-033).

accounting rates for the completion of U.S.-billed calls provided by unaffiliated carriers." Reply Comments, Id. This alleged "self-correspondency" issues was fully addressed by TLD's Statement filed in the first round of comments in this proceeding, but that response is ignored by AT&T. TLD Statement, 11-12. AT&T still ignores, as it did in its Petition, the fact that the Commission has already considered and rejected this very same argument by AT&T. In the TLD Order, the Commission determined that AT&T's concern on this point was fully addressed by the dominant carrier policies and the fact that TLD would operate as a separate corporate entity from Telefonica with separate books of account which are subject to Commission audit. TLD Order, 112. AT&T continues to make the same conclusory allegation, but offers no new evidence or rationale for its position. Under the Commission's rules by which TLD must operate, it may not receive favored accounting rates or prices from its parent, or from any other carriers, and it is treated exactly the same as any other of its competitors. AT&T's statement that "unaffiliated carriers" have a cost and pricing advantage is untrue.

3. AT&T states that TLD incorrectly alleges that the Commission "has already evaluated and decided the public interest implications of foreign carrier entry in the U.S. in the context of the TLD Acquisition Order and/or the International Services Order [7 FCC Rcd. 7331 (1992)]." AT&T Reply Comments, 10. That is not TLD's position. The Commission said in the TLD Order that it did not require a rule making proceeding to act on

Telefonica's purchase of TLD. TLD Order, 109. Likewise, the Commission made clear in International Services that it was addressing only the questions of regulation after market entry, not the question of whether a particular carrier should be permitted to enter the market. In the TLD Order, the Commission determined that the potential for foreign affiliation resulting in discriminatory conduct by TLD could be resolved by the dominant international carrier conditions adopted in International Services, combined with additional safeguards tailored for the TLD situation. The Commission also made clear its intention to continue to review future facilities applications, and also to review these safeguards in three years, to insure that the conditions and safeguards remain adequate to prevent TLD from using its foreign carrier affiliation to compete unfairly against others. The Commission did not adopt general rules of foreign carrier entry in either of these proceedings and TLD has never claimed that it did.^{3/}

4. AT&T cites two Commission decisions to support its assertion that there are no due process issues involved in its attempts to completely change the Commission's regulation of TLD. The two cases, In the Matter of Ortho-Vision, 82 F.C.C.2d 178 (1980) and Telerent Leasing Corp., 45 F.C.C.2d 204 (1974), stand basically for the proposition that the Commission's powers under

^{3/} AT&T's statements on this point are not surprising. In its oppositions to TLD's Section 214 applications, AT&T has attempted to convince the Commission to evaluate every such application as a new market entry issue, rather than applying the regulatory rules and conditions which it established in International Services and the TLD Order.

the Communications Act, when exercised in an appropriate area and supported by a proper record, may supersede state regulatory actions. These cases do not address the issue presented by AT&T's efforts to change the rules of the game for TLD. Based solely on the state of competition in the world's telecommunications markets, a fact known to the FCC at the time of the TLD Order, and without evidence of abuse or anticompetitive activity by TLD, AT&T would have the Commission change the rules so that TLD would be barred automatically from any facility expansion or upgrading or the provision of any new service that would require Section 214 approval. Such action would indeed pose due process issues.

5. AT&T states that the significance of the Section 310(b) restrictions is belied by the "increasing and significant" participation of carriers like Telefonica in the U.S. AT&T Reply Comments, 14, note 13. AT&T says that Telefonica has "overcome" the restrictions of 310(b) by transferring common carrier radio licenses to a U.S. carrier and leasing back the necessary rights to use the licensed facilities. Telefonica has not "overcome" the 310(b) restrictions, it has complied with them. Radio licenses held by TLD's predecessor were transferred to a new company, TUPR, which is primarily owned by the Puerto Rico Telephone Authority. Telefonica acquired a 14.9 percent interest in TUPR. That ownership is well within the restrictions of 310(b). Further, AT&T is incorrect when it states that TLD leases back the facilities. TLD does not lease facilities from TUPR. TUPR offers use of its earth stations and point-to-point

microwave facilities to TLD and other common carriers under tariff. TLD obtains facilities from TUPR solely on the basis of these publicly filed tariffs. TLD is free to obtain facilities from this or any other available source, and is not obliged to use TUPR facilities. Correspondingly, TUPR is free to compete with TLD for carrier customers. TLD Order, 107, 113-114. As the Commission was advised in the context of Telefonica's acquisition of TLD, this arrangement was structured exactly to insure full compliance with 310(b). TLD would prefer to own radio facilities, as its competitor AT&T is able to do. Ownership would be more cost effective, and, in light of the growing significance of wireless communications and AT&T's acquisitions in this area, could have increasing competitive significance.

6. AT&T says that the adoption of its proposed rules would enable TLD's Section 214 applications to "proceed more expeditiously." AT&T Reply Comments, 15-16. It is certainly true that delay in processing TLD's Section 214 applications is an issue because delay places TLD at a competitive disadvantage versus its competitors, primarily AT&T. If AT&T's rules were adopted, however, the result would be that all of TLD's presently pending applications would be denied. For TLD, that is not an acceptable approach to expediting the Commission's processes.

7. AT&T says that the fact that foreign carriers seek to enter the U.S. market while foreign countries liberalize their markets slowly is evidence that the Commission's policies do not work. AT&T Reply Comments, 16. The facts regarding what carriers have sought entry to the U.S. market and the status of

foreign market competition speak for themselves and are not at issue here. TLD's point, however, is that there is no evidence that the Commission's dominant carrier rules and the safeguards applied to specific carriers have been inadequate to achieve their stated purpose of preventing foreign affiliated carriers from using that affiliation to engage in unfair, anticompetitive practices. Further, AT&T argues that TLD is incorrect when it says that there is no evidence that AT&T's proposals would lead to the opening of foreign markets. AT&T Reply Comments, 25, note 25.^{4/} AT&T cites present activity in the UK as evidence that its proposed rules are the correct way to positively influence foreign markets. Events occurring under current regulatory conditions hardly foretell the future under a vastly different regulatory approach and are not evidence that AT&T's rules would have the desired positive effect. The Reply Comments of the International Telecommunications Users are far more credible on this point. They fear the possibility of retaliation, possibly aimed at portions of the market which are of great interest to these users but perhaps less significant to AT&T. Certainly there is no evidence that it would be in the public interest for

^{4/} The trade publication included in AT&T's Reply Comments at Attachment II, and referred to in AT&T's note 25, is totally illegible in the copies of the AT&T Reply Comments available to TLD. Therefore, TLD is unable to comment on that portion of AT&T's statements. TLD can observe, however, that the information which Telefonica and TLD have provided in various pleadings to the Commission on the state of the market in Spain and on the terms of Telefonica's concession agreement, has not been for the purpose of promising change, as AT&T may be implying. Rather, that information has been provided to correct AT&T's repeated misstatements of fact on those subjects.


the FCC to set off a regulatory trade war. In such a war, only AT&T would benefit.

ACCORDINGLY, TLD requests that the Commission deny AT&T's Petition for Rule Making.

Respectfully submitted

TELEFONICA LARGA DISTANCIA de
PUERTO RICO, INC.

By:


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November 22, 1993

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CERTIFICATE OF SERVICE

I, Mark H. Cobb, do hereby certify that a copy of the foregoing Request for Authorization to File Statement in Response and Statement of Telefonica Larga Distancia de Puerto Rico, Inc. in Response to Reply Comments of AT&T, dated November 22, 1993, has been sent by first class United States mail, postage prepaid, or hand-delivered to the following:

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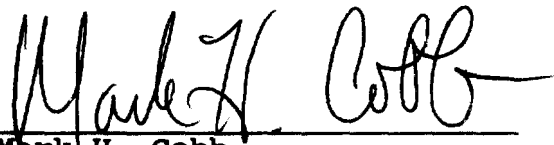
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